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NOTES ON INTERNATIONAL AFFAIRS

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The Treaty of Peace with Austria. In drafting the treaty of peace with Austria, the allied and associated powers, though enabled to apply most of the principles and incorporate many of the provisions of the treaty with Germany, found themselves confronted with preliminary problems somewhat different from the difficulties attending their earlier deliberations. In the case of Germany, though her rulers had abdicated and the stability of the new government was imperilled by internal disorder, yet it was upon a state still tolerably coherent that the Peace Conference could impose its terms. The armistice had indeed been concluded after a military decision; in a sense, Germany had been beaten to her knees. But her vast dominion had not felt directly the ravages of the war. With the lifting of the blockade and the importation of raw materials, her industries would readily revive. Her territorial integrity was substantially intact. The population was homogeneous; no bonds could be stronger than their common speech and traditions; while much of the old sympathies and allegiance survived, favoring if not the Empire, at least a German Republic.

But once the armistice had discredited the military and political power that held the Austro-Hungarian Empire together, that artificial structure was not long in succumbing to inherent forces of disruption. With the removal of the monarch, the dynastic tie was gone; and besides this bond, imperial unity had depended chiefly on the power of repression. It was to be expected that a state, embracing the remnants of so many kingdoms and principalities loosely strung together and inhabited by men so diverse in race, speech and culture, should burst violently asunder the moment the sole barrier to dismemberment, the restraining hand of the ascendant races, began to lose its international prestige. The desire for self-determination, long acutely felt, found its opportunity and asserted itself on all sides. Instead of the single imperial entity that had accepted the armistice negotiations, the Peace Conference faced an empire in dissolution and found itself apportioning

the scattered fragments among some seven autonomous kingdoms and republics.

In dictating terms to Germany, the foremost necessity had been to exact the fullest measure of reparation that her promise of industrial revival could bear, and to insure such effective disarmament that Europe might escape the nightmare of another aggression at least for a generation to come. But after the dismemberment of Austria-Hungary, the possibility of adequate reparation for her transgressions had dwindled almost below computation; and though the rise of so many new and ill-consorting states by no means guaranteed the peace of Europe, the military menace of the Hapsburgs had vanished forever. Hence, in liquidating the confused affairs consequent upon this disruption, the most pressing problems were the delimitation of what was left of the Austrian state as such, the regulation of its relations to the new states arising on its ruins, and the disposal of the former Empire's non-European possessions. With the identity of the new Austrian state thus clearly established, the question of reparations could be solved after a study of its resources by a commission, and securities against future disorder were available through disarmament on principles already adopted by the Peace Conference in dealing with the German situation.

The Austrian treaty follows the same outline as the German, and in many places is identical, except for the change in names. The preamble, however, is more detailed than in the German summary; it frankly ascribes the origin of the war to the former Austro-Hungarian government, and further intimates that, as that monarchy has now ceased to exist, its obligations must be assumed by its successor, the Austrian Republic. In their counter-proposals to the draft treaty, the Austrian delegates objected that, in view of the dissolution of the Austro-Hungarian monarchy, Austria ought not to be treated as an enemy state at all; and that, in consequence, she ought not to be made in any special way inheritor of the obligations in regard to reparation, to which the Austro-Hungarian monarchy would be liable, did it still exist.

To this "fundamental misconception," the conference, in its covering letter accompanying the final terms, replied that the war had been precipitated by the Austro-Hungarian ultimatum to Serbia, requiring the acceptance of demands which involved a virtual surrender of its independence; that this ultimatum was no more than an insincere excuse for beginning a war for which the late autocratic government at

Vienna, in close association with the rulers of Germany, had long prepared, and for which it considered the time had now arrived; and that the then Austro-Hungarian government, refusing all offers of a conference of conciliation on the basis of Serbia's reasonable reply, had immediately opened hostilities against Serbia, thereby deliberately setting light to a train which led directly to universal war. For these misdeeds of a government which was their own and which had its home in their capital, the people of Austria could not now escape responsibility: they had never endeavored to cure the militarist and domineering spirit of the Hapsburgs; they had made no effective protest against the war; they had not refused to assist and support their rulers in its prosecution; the war had been acclaimed on its outbreak in Vienna, the people of Austria were its ardent supporters from start to finish and they did nothing to dissociate themselves from the policy of their government and its allies until they were defeated in the field.

In the preamble and throughout the treaty, Austria is recognized under the name of the "Republic of Austria." In the counter-proposals, the Austrian delegates, with an eye to annexation possibilities then under discussion at Vienna, constantly speak of "German Austria." To this designation, the Allies' note demurred, and insisted on the adoption of the term they had imposed. To frustrate the campaign for annexation and a "Greater Germany," a specific article in the treaty makes the independence of Austria inalienable otherwise than with the consent of the Council of the League of Nations and obligates Austria, in the absence of such consent, to abstain from any act which might directly or indirectly compromise her independence.

The text of the treaty comprises 381 articles. As in the case of the German instrument, it includes as its first integral part the League of Nations covenant, which Austria agrees to accept, though it is only by a subsequent vote of the other members that she can be admitted to the league.

With an illustrative map, the second part of the treaty delimits the boundaries of the new Austria in detail. The western and north-western frontiers facing Bavaria and the western frontier facing Switzerland and Lichtenstein remain unchanged as of August 3, 1914. Cessions of territory require minute demarcation in the case of Czechoslovakia, Italy, the Klagenfurt area, the Serb-Croat-Slovene state and the Hungarian Republic. To give effect to the treaty descriptions, joint boundary commissions, composed of a majority appointed by the

disinterested Allies, and one member each by Austria and the other state concerned, are created by the treaty and empowered to trace these boundaries on the ground; to these commissions, the various states interested undertake to furnish all necessary information.

The northern frontier facing Czechoslovakia follows the existing administrative boundaries formerly separating the provinces of Bohemia and Moravia from those of Upper and Lower Austria, subject to certain minor rectifications, notably in the regions of Gmünd and Feldsberg and along the river Morava. In defining this boundary, the Allies tried to secure to Czechoslovakia a complete system of communications, and therefore departed from the historical frontier of Bohemia to assure west and east communications to southern Moravia, and in the Gmünd region to give Bohemia a junction of the two large railroad lines that constitute its chief channels of trade.

The frontier with Italy begins at the Reschen Pass on the Swiss frontier and follows in general the watershed between the basins of the Inn and the Drave on the north and the Adige, Piave and Tagliamento on the south. This line, which runs through Brenner Pass and the peak of the Signori (*Dreiherrenspitze*), includes in the Italian frontiers the valley of Sachsen and the basin of Tarvis. East of the Tarvis region, the Austrian frontier follows the Karawanken Mountains to a point southeast of Villach, then runs north of the Worthersee, the towns of Klagenfurt and Volkersmarkt, thence along the north of the Drave in such a manner as to leave to the Serb-Croat-Slovene state the town of Marburg and to Austria Radkersburg, just to the north of which latter place the line will join the Hungarian frontier.

The disposition of the Klagenfurt basin, which lies to the south of this line, will be determined by plebiscites to be organized in two zones of that area under a joint commission within three months after the treaty comes into effect. In case a majority of the population votes for union with Austria, the southern frontier of Austria will continue along the Karawanken Mountains to a point southeast of Eissenkappel, thence northeast, passing east of Bleiburg, traversing the Drave just above its confluence with the Lavant, and then rejoin the frontier already traced.

In the first draft of the treaty, the eastern frontier facing Hungary was left unchanged. In deference, however, to vigorous representations on the part of Austria, the conference finally concluded that the Odenburg region of Hungary should, chiefly on ethnological grounds, as its population of several hundred thousands is preponderantly

German, be included within the Austrian frontier. Accordingly, the old administrative boundary, from a point west of Pressburg, was projected south through the Neusiedler See and thence southwest until it hits the historic frontier north of Hartsberg. With respect to the more northerly portion of the boundary between Austria and Hungary, the Allies desired to guarantee access to the sea for the Czechoslovak state and therefore provided that Pressburg should have such access assured by transit across Hungarian as well as Austrian territory.

Thus by the recognition of the independence of Czechoslovakia and the Serb-Croat-Slovene state, and by the cession of other territories which previously formed part of the Austrian Empire, Austria is reduced to a state of six or seven million people inhabiting a territory of five or six thousand square miles.

Of the "gross injustice" of this dissolution and distribution, the Austrian delegation, warmly supported by the national press, made bitter complaint, particularly as to Bohemia, Western Hungary, Styria, Southern Carinthia and the Tyrol. The loss of her industries, Austria could never survive. They urged further the perilous responsibility assumed by the Entente in subjecting "four and a half millions of German Austrians to foreign domination." The Austrian Chancellor, Dr. Karl Renner, specifically declared that the partition "would create another hotbed of war such as the Balkans have been."

So carefully, however, had the experts of the allied powers, in tracing the boundaries of the future Austrian republic, weighed every historical, geographical, ethnological, economic and political consideration—so states the covering letter of the Allies accompanying the revised version of the terms—that the only concessions that could be accorded to the numerous objections and counter-proposals were the Odenburg region, mentioned above, and the return to Austria of Radkersburg which the tentative draft had included within the Serb-Croat-Slovene frontier. Defending the cession to Italy of parts of the Tyrol, the powers replied that they had been impressed by the fact that for decades the Italian people had suffered from a menace deliberately directed at their heart by the retention in Austro-Hungarian hands of military outposts commanding the Italian plains, and hence they had thought it best to accord to Italy the natural frontier of the Alps, which she had so long demanded.

In this decision, it is worthy of remark, the principle of self-determination, so prominent throughout the peace negotiations, seems de-

liberately disregarded, the prospective functions of the League of Nations and its guaranty of territorial integrity are overlooked, and the conference takes a backward step in the renewed emphasis on strategic military frontiers. On this whole matter of partition, it is a grave question of statesmanship whether the cause of European peace has been advanced by the Conference's official recognition of the absolute independence of the new states already given over to rivalry and mutual suspicion. It is believed by many that it might have been possible to devise some practicable scheme of federation with local autonomy for the several states. In the absence of a centralizing influence the present settlement perpetuates the animosity between Teuton and Slav, and creates another Balkan problem in the center of the European world.

In a series of constructive measures, denominated "Political Clauses" in the treaty and designed to establish the new order in Europe, Austria recognizes and accepts the frontiers of Bulgaria, Greece, Hungary, Rumania, the Serb-Croat-Slovene state and the Czechoslovak state as at present or ultimately determined by the Allies. In favor of the Allies, too, she renounces all her rights and titles over territories formerly belonging to her which, though outside the new frontiers of Austria, have not as yet been assigned to any state. She recognizes further the complete independence of the Czechoslovak state, including the autonomous territory south of the Carpathians, of the Serb-Croat-Slovene state, and of all territories which formed part of the former Russian Empire. Austria accepts definitely the annulment of the Brest-Litovsk treaty, of all treaties and agreements concluded with any Russian governments or political groups since the revolution of November, 1917, and of the treaties of 1839, by which Belgium was established as a neutral state and her frontiers fixed. Austria likewise adheres to the abrogation of the neutrality of the Grand Duchy of Luxemburg, and consents in advance to all international agreements reached as to it, together with all the arrangements made with Germany concerning the territories whose abandonment was imposed on Denmark by the treaty of 1864.

To the protests of the Austrian delegation against the provisions governing their relations to the new states, the allied and associated powers contended in reply that the dissolution of the monarchy and the consequent disabilities which Austria must endure were the direct outcome of that fatal policy of domination, a system for maintaining the ascendancy of the German and Magyar peoples over a majority

of their fellow-subjects, for which the people of Austria were themselves to blame. "This policy," said the Allies, "led to those irredentist movements along the frontiers of Austria and Hungary which kept Europe in a ferment of unrest. It led to the growing dependence of Austria-Hungary on Germany, and consequently to the subordination of the Austro-Hungarian policy to the German plans for domination. . . . The policy has borne its inevitable fruit in the fact of partition, and it is this partition that lies at the root of Austria's troubles to-day."

In the Austrian treaty, the problem of reparations, in view of her obvious inability to pay in full, sinks to somewhat secondary importance. Austria accepts, as a matter of course, the responsibility of Austria and her allies for causing the loss and damage to which the allied and associated governments and their nationals have been subjected as a consequence of the war imposed upon them by the aggression of Austria-Hungary and her allies by land, by sea and from the air. But the treaty recognizes that her resources are not adequate, after taking into account the permanent diminution of such resources resulting from the creation of new states and from other provisions of the treaty, to make complete reparation. Bearing in mind these disabilities, the Austrian subsection of the inter-allied reparations commission will notify Austria before May 1, 1921 of the extent of her liabilities and of the schedule of payments for the discharge thereof during thirty years. As immediate reparation, Austria shall pay during 1919, 1920 and the first four months of 1921 "a reasonable sum which shall be determined by the commission." At stated intervals, three bond issues are to be made and the amounts divided by the Allies in equitable proportions determined upon in advance.

Recognizing the right of the Allies to ton-for-ton replacement of all ships lost or damaged in the war, Austria agrees to deliver within two months to the reparations commission all merchant ships and fishing boats belonging to nationals of the former empire, together with 20 per cent of her river fleet. In part reparation, she must devote her economic resources to the physical restoration of invaded areas, and, where injured governments so desire, animals, machinery and other equipment destroyed by Austria must, according to her ability, be replaced in kind. As an immediate advance, specified numbers of live stock, milch cows, heifers, bulls, calves, bullocks, sows, draft horses and sheep must be delivered to Italy, Serbia and Rumania within three months after ratification. Provision is also made for the

claims of invaded or ceded territories to records, documents, works of art, scientific material and the historic possessions of the Austro-Hungarian Crown. As for certain specified artistic treasures, spoils of past wars of the House of Hapsburg, a special committee of three jurists is to decide the question of restitution.

By way of further reparation, Austria must pay the total cost of the armies of occupation so long as maintained and, without consent of the reparations commission, no gold may be exported before May 1, 1921. The Austro-Hungarian pre-war debt, specifically secured on railways, salt mines and other property, is distributed among all the states arising out of the dismemberment on the basis of the value of the property transferred. The unsecured pre-war bonded debt is to be similarly assumed by all the states, in the ratio their revenues for the three years before the war bore to those of the whole empire, excluding Bosnia and Herzegovina. Except for war-debt bonds held by nationals of the separated territories, Austria alone assumes the entire war-debt of the former government. All currency notes of the former Austro-Hungarian bank are to be withdrawn from circulation in the separated territories and redeemed by the reparations commission in the immediate liquidation of the bank. Each state acquires title to all former royal and government property located within its borders, and the assessed value thereof is to be credited to Austria on the reparation account. Similar property of predominantly historic interest and associations may be transferred without payment. Besides surrendering sundry financial advantages in the surrounding states, Austria agrees to deliver to the Allies the gold deposited as security for the first issue of Turkish currency notes; she foregoes all benefits accruing from the Bucharest and Brest-Litovsk treaties, and renounces in favor of the allied and associated governments all other claims against her former allies.

In the matter of punitive reparation, the section on penalties is reproduced from the German treaty except that, instead of demanding the trial of the former Kaiser, specific provisions require the coöperation of the new states in the prosecution before Entente tribunals of any of their nationals charged with crimes against the laws and customs of war.

As security against future military aggression, and as part of a universal plan "to render possible the initiation of a general limitation of the armaments of all nations," the Austrian army is to be reduced within three months to thirty thousand men, and compulsory military

service is supplanted by voluntary enlistment. All officers must be regulars, those newly appointed engaging to serve at least twenty consecutive years; and a twelve-year enlistment is required of all noncommissioned men. Munitions of war may be neither imported nor exported, and the domestic manufacture of war-materials is restricted to a single factory under control of the state. The naval and air forces are practically wiped out. The treaty prescribes the scrapping of all vessels of war under construction; submarines, even for commercial purposes, are proscribed. For three months after the conclusion of the treaty, the Allies will exercise supervision over even the commercial use of the high-power wireless station at Vienna. Besides the immediate demobilization of all existing aerial forces, wide categories of naval and aviation material are declared surrendered to the Allies, and henceforth no Austrian national may enlist in the army, navy or air service of any foreign power.

For further immediate realization of the disarmament ideal, apart from the promise of general disarmament incorporated in the covenant of the League of Nations, the Council of Four had already fixed in the first draft of the Austrian treaty the relative strengths of the armies which all the eastern states inheriting parts of the Hapsburg monarchy should maintain. This restriction evoked a vehement protest from the lesser states. The Yugoslavs in particular asserted that it was unfair to limit their armaments and yet leave their great rival, Italy, with complete freedom in this respect. The Poles, who were firmly convinced that they might be compelled at no distant date to defend their independence, did not wish to see themselves and their natural allies restricted in the means of defense, and they also demanded the elimination of this provision. In compliance with this demand, the limitation, so far as it affected all the states but Austria, was withdrawn by the Entente powers.

In the principles incorporated for the protection of minorities, Austria acknowledges that her obligations in this respect are matters of international concern over which the League of Nations has jurisdiction. She assures complete protection of life and liberty to all inhabitants of Austria, without distinction of birth, nationality, language, race or religion, together with the right to the free exercise of any creed. Similarly, all Austrian nationals are to be equal before the law. No restrictions are to be imposed on the free use of any language in public or private, and reasonable facilities are to be afforded to Austrian nationals of non-German speech for the use of their own

language before the courts. Like protection is thrown round minorities in the matter of schools, which are to give instruction in the children's own tongue and to share equitably in the public funds. Austria is not precluded, however, from making the teaching of German obligatory in all schools. These provisions are to be embodied in the fundamental law as a bill of rights under the protection of the League of Nations. To the same purpose, Czechoslovakia, the Serb-Croat-Slovene state and Rumania agree to embody in a treaty with the principal allied and associated powers such provisions as may be deemed necessary to protect all minorities and to insure freedom of transit and equitable treatment for the commerce of all nations.

To these provisions establishing racial, religious and linguistic liberty in all the countries affected by the treaty, the Rumanians entered an impassioned protest, seconded by the Yugoslavs and the Czechoslovaks, with mild support from Premier Venizelos for Greece. They charged these minority provisions were an infringement of their sovereignty, in that outside powers obtained a measure of control over the peoples of the Balkans; that the treaty further sought to establish an outside force to which discontented elements in the Balkan states could appeal over the heads of their own governments, making some nations superior and placing others—in this case, the Balkan nations—in an inferior position: not that they were unwilling to carry out the religious, racial and linguistic principles enunciated in the treaty, but that they preferred to carry them out themselves, without being under outside compulsion. In a response for the Allies, President Wilson upheld the provisions as essential to an absolutely just peace: the mistreatment of minorities had been a frequent cause of war, and it was desirable to eliminate that cause. As the great powers had made the greatest sacrifices in the world conflict, and had freed the smaller peoples, to whom they had ceded large territorial areas, the great powers felt that they had a right to lay down certain fundamental principles which they believed necessary for the peace which the powers had won and intended to maintain.

As in the case of the German clauses relating to the inhabitants of Alsace-Lorraine, constructive safeguards protect former Austro-Hungarian nationals acquiring nationality among the Allies. Their contracts are maintained subject to cancelation by their governments, and in undertakings constituted under Austro-Hungarian law in territories detached from the former empire, Austria must recognize new agreements by the Allies and transfer all necessary documents and

information. In the same territories, property of Austrian nationals is to be restored to its owners free from any measures of liquidation or bans imposed since the armistice, and contracts between Austrians and nationals of the new states are reaffirmed without option of cancellation. In return for reciprocal obligations to supply certain raw materials, supplies of coal are insured to Austria from Poland and Czechoslovakia, upon which she is dependent. Guaranties of freedom of transit, similar to the German provisions and including postal, telegraphic and telephonic services, grant Austria transit privileges through all former Austro-Hungarian territory in order to insure her access by land and water to the Adriatic.

The foregoing summary embraces a number of modifications introduced into the economic settlement in response to the observations of the Austrian delegation. The Allies further reminded the delegation that under the League of Nations, to which it hoped Austria could be admitted at an early date, further protection for all small communities, including the new Austria herself, was provided by the treaty of peace. No longer should powerful empires be permitted to threaten with impunity the political and economic life of lesser states. Strictly humanitarian ideals were to dominate the reparations commission; the vital interests of each community overshadowed every other consideration, and the commissioners were empowered to permit every reasonable mitigation required, for example, by the Austrian food situation.

In a set of miscellaneous measures of constructive intent, Austria agrees to all allied arrangements with Germany, Hungary, Bulgaria, and Turkey; renounces all pecuniary claims against any power signing the treaty; and accepts all decrees of allied prize courts, and conventions relating to traffic in arms. In return, the Allies undertake to continue the missionary work of any mission properly falling to them in the division of Austria's former foreign possessions.

The last main constructive measure, as in the German prototype, provides for the creation, maintenance, procedure and fundamental principles and ideals of an international labor organization. The treaty strikes at the root of the world problem in declaring that, as the League of Nations has as its object the establishment of universal peace, such a peace can be established only if it is based on social justice the world over. With that intent, the treaty recommends, in proposals made familiar in recent years by the American Federation of Labor, nine concrete objectives for industrial reform on an international

scale. Though not claiming completeness or finality for this program, the treaty expresses the conviction that even this beginning will confer lasting benefits on the wage-earners of the world.

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Recent Important Articles from Scientific Journals. *Criminal Responsibility of Individual Offenders Against the Law of Nations.* The chief weakness of international law is, as everyone knows, the lack of adequate sanctions. This weakness was abundantly demonstrated during the late war. In the effort to discover more effective means of enforcing observance of its commands and injunctions, many writers are now proposing the application of the criminal law to individual offenses against its rules. That is to say, it is proposed to try and punish specific offenses against the laws of war that are at the same time violations of the criminal law, whenever the offenders fall into the hands of the injured party. During the past two years a considerable amount of periodical literature has appeared in which the application of this remedy is advocated. Among the more important contributions of the kind may be mentioned an article by Professor Paul Pic of Lyons entitled *Violations des Lois de la Guerre, les Sanctions Nécessaires*, in 23 *Revue Générale de Droit International Public* (1916); an article by Professor Merignhac of Toulouse entitled *Sanctions des Infractions au Droit des Gens Commises au Cours de la Guerre Européenne*, (*ibid.*, 1917); an article by L. D. entitled *Des Sanctions à établir pour la Répression des Crimes Commis par les Allemands en Violation du Droit des Gens et des Traités Internationaux* (44 *Clunet*, 1917); an article by the late Professor Renault of Paris entitled *De l'Application du Droit Pénal aux Faits de Guerre*, in the *Rev. Gén. de Droit Int.* (Jan.-Aug., 1918), and an article by Professor Nast of Nancy entitled *Les Sanctions Pénales de l'Enlèvement par les Allemands du Matériel Industriel en Territoires Français et Belges Occupés par leurs Troupes* (*ibid.*, Jan.-Feb., 1919).

English and American writers also are not lacking who are advocating recourse to this expedient. See a paper by H. Bellot entitled "War Crimes, Their Prevention and Punishment," read before the Grotius Society of London and published in the second volume of its proceedings; an article by Professor T. S. Woolsey, entitled "Reconstruction and International Law," in the *American Journal of International Law* for April, 1919; and an article by C. H. Bartlett entitled "Liability for Official War Crimes," in 35 *Law Quarterly Review*.